

Senate Committee on Environment and Public Works Hearing Entitled, “*Hearing on the Nominations of Amanda Howe to be Assistant Administrator for Mission Support of the Environmental Protection Agency, David Uhlmann to be Assistant Administrator for Enforcement and Compliance Assurance of the Environmental Protection Agency, and Carlton Waterhouse to be Assistant Administrator of Land and Emergency Management of the Environmental Protection Agency*”

September 15, 2021

Questions for the Record for Assistant Administrator David Uhlmann

Senator Markey:

1. People of color, marginalized communities, and low-income communities continue to bear the brunt of pollution through systemic oppression and inaccessible solutions. If confirmed, will you work to ensure that all of our communities benefit from a clean and healthy environment?

RESPONSE: Yes. If confirmed, I will work to strengthen our environmental protections, including for communities of color and socio-economically disadvantaged communities that are disproportionately impacted by pollution in both urban and rural areas.

2. The Environmental Protection Agency’s (EPA) Enforcement and Compliance History Online (ECHO) site is currently only available in English. ECHO is already a complex database, and this additional barrier renders it inaccessible to the many Americans who do not read or speak English. If confirmed, will you commit to making ECHO information available in additional languages, such as Spanish?

RESPONSE: If confirmed, I will confer with the EPA team to understand why the ECHO database is currently only available in English and learn what options exist to make the information available in additional languages.

Ranking Member Capito:

1. Working with stakeholders to ensure entities are in compliance with existing laws and regulations is also a critical function of the Office of Enforcement and Compliance Assurance (OECA). Can you provide an example of when you worked with an entity to help them comply with existing statutes?

RESPONSE: I served as the counselor to the independent compliance monitor appointed by the Justice Department after the VW diesel scandal. In that role, I conducted numerous training sessions for senior management officials at VW and Audi, including the VW and Audi boards, about compliance with environmental laws. Our Nation’s environmental laws provide exceptional tools for improving the lives of hard-working Americans and meeting our obligations as stewards of the

environment for future generations. If confirmed by the Senate as Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance, I intend to highlight the efforts of companies that promote ethics, integrity, and environmental stewardship, while holding accountable companies who break the law or expose our communities to harm.

2. What do you see as the appropriate role of EPA working with regulated communities and entities, including entities in rural areas with limited financial resources, to come into compliance with environmental regulations?

RESPONSE: I understand how illegal pollution harms our communities in rural areas, how the federal government must work in partnership with state environmental protection efforts, and the opportunities that are available to work closely with interested organizations and the business community. If confirmed, I look forward to listening to those varied perspectives and promoting partnerships across the federal government with stakeholders.

3. Under Administrator Regan, OECA has issued a criminal enforcement environmental memorandum on June 21, 2021 that encouraged staff to “think creatively” about ways to enhance remedies for “past harms.”¹ How would you implement the direction in this memorandum if confirmed?

RESPONSE: If confirmed, I look forward to being briefed on the June 21, 2021 memorandum by my team in the Office of Enforcement and Compliance Assurance and discussing its fair and consistent implementation in a transparent manner.

4. From your perspective being in a role outside the federal government, what are examples of “creative” ways to enhance remedies?

RESPONSE: If confirmed, I look forward to being briefed on the June 21, 2021 memorandum by my team in the Office of Enforcement and Compliance Assurance and discussing its fair and consistent implementation in a transparent manner.

5. What is your perspective of the scope of “past harms” that need to be remedied and whether future enforcement actions the proper method to address them?

RESPONSE: If confirmed, I look forward to being briefed on the June 21, 2021 memorandum by my team in the Office of Enforcement and Compliance Assurance and discussing its fair and consistent implementation in a transparent manner.

6. How would you define an environmental justice community?

¹ US EPA, Memorandum on Strengthening Environmental Justice Through Criminal Enforcement (June 21, 2021), <https://www.epa.gov/system/files/documents/2021-07/strengtheningejthroughcriminal062121.pdf>

RESPONSE: I understand that EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

7. If confirmed, would you have plans to shift staff or funds to focus on particular sectors or media?

RESPONSE: I do not have predetermined plans to shift staff or funds to focus on particular sectors or media. If confirmed, I look forward to learning more about staffing and funding needs from my team in the Office of Enforcement and Compliance Assurance.

8. If so, how would you ensure transparency and effective communication to the public, states, and industry regarding these decisions?

RESPONSE: I do not have predetermined plans to shift staff or funds to focus on particular sectors or media. If confirmed, I look forward to learning more about staffing and funding needs from my team in the Office of Enforcement and Compliance Assurance and to ensuring transparency and effective communication about any subsequent decisions that I make.

9. Can you describe your position on the role of criminal versus civil enforcement tools and actions available to EPA and what is your view of the proper balance between these types of enforcement tools and actions?

RESPONSE: Congress provided EPA a range of enforcement tools to address pollution that harms American communities. EPA must strike a balance among those remedies when violations occur, with criminal enforcement reserved for the most egregious violations that occur with a culpable mental state. If confirmed, I look forward to working with the experienced civil and criminal enforcement teams in the Office of Enforcement and Compliance Assurance to ensure an appropriate balance among the available enforcement and compliance tools.

10. If confirmed, how would you balance the application and use of supplemental environmental projects and other mitigation efforts versus injunctive relief when resolving enforcement disputes?

RESPONSE: If confirmed, I look forward to working with the experienced career staff at EPA to determine the best approach moving forward with respect to the use of supplemental environmental projects and other mitigation efforts and how to balance those with injunctive relief.

11. EPA recently detailed a *Memorandum of Understanding on Collaborative Efforts on Enforcement and Compliance Assurance in Overburdened Communities between the U.S*

*EPA Region 9 and the California Environmental Protection Agency,*² which it claims will “[e]nhance existing collaborations by increasing joint inspections in overburdened communities... [and] [p]romote coordination of enforcement responses, including joint judicial enforcement actions in overburdened communities.”³ How is this a change from the way EPA currently works with states to handle enforcement issues? If it is a change, why is it only being extended to the state of California, and do you interpret it as also having bearing on other states which reference California’s environmental laws in their own statutes?

RESPONSE: I know from my experience with the Justice Department and as a law professor that the federal government must work in partnership with state environmental protection efforts to be successful. If confirmed, I look forward to being briefed on this memorandum.

12. What is the value of joint inspections or joint judicial enforcement actions, and how can they impact enforcement outcomes?

RESPONSE: I know from my experience with the Justice Department and as a law professor that the federal government must work in partnership with state environmental protection efforts to be successful. If confirmed, I look forward to working with EPA’s state partners to strengthen environmental protection.

13. EPA’s press release states that enforcement resources and compliance-related activities will be targeted and informed by the knowledge and lived experience of overburdened communities. Can you elaborate on how this information will be weighed and considered in enforcement or compliance activities? Would this equate to picking and choosing enforcement actions to which EPA decides to devote resources?

RESPONSE: President Biden has made a commitment to environmental justice and equity as a cornerstone of his agenda. Securing environmental justice for communities most overburdened by pollution is a priority for Administrator Regan, and it will be a priority for me if I am confirmed.

14. What do you consider a working definition of “overburdened communities”?

RESPONSE: President Biden has made a commitment to environmental justice and equity as a cornerstone of his agenda. Securing environmental justice for communities most overburdened by pollution is a priority for Administrator Regan, and it will be a priority for me if I am confirmed.

² https://calepa.ca.gov/wp-content/uploads/sites/6/2021/09/2021-09-10-MOU_CalEPA-USEPA-1.pdf

³ US EPA, Press Release, *U.S. EPA, CalEPA launch joint effort to strengthen environmental enforcement in communities overburdened by pollution* (Sept. 20, 2021), <https://www.epa.gov/newsreleases/us-epa-calepa-launch-joint-effort-strengthen-environmental-enforcement-communities>.

15. Under the Trump Administration, EPA issued a Notice of Violation to the City of San Francisco regarding their combined sewer overflows (CSO), which has been disputed by the City.⁴ What follow-up actions would you take to address this NOV?

RESPONSE: I have no predetermined actions in mind related to this Notice of Violation. If confirmed, I look forward to being briefed on this issue.

16. In a 2013 publication for the American Constitution Society, you stated the Obama Administration should adopt a carbon tax, increase regulation for power plants and fracking, and institute a Clean Energy Standard (CES) with a preference for renewables.⁵ Do you believe that a carbon tax should be implemented as a way to reduce the federal deficit and what are your views of the versions of these policies included in the House-proposed *Build Back Better Act*?

RESPONSE: My 2013 publication reflected my personal opinions about a sensible environmental agenda during the second term of the Obama administration (2013-2016). I support President Biden's whole-of-government approach to addressing climate change, and if confirmed I look forward to supporting the Administration's climate goals through my work in the Office of Enforcement and Compliance Assurance, as appropriate. My role as Assistant Administrator will be to enforce the laws Congress enacts and any regulations EPA develops to protect our communities from the devastating effects of climate change.

17. What is your view of EPA's existing authority to address climate change under the Clean Air Act?

RESPONSE: I understand that EPA's Office of Air and Radiation has the lead role at EPA for addressing climate change under the Clean Air Act. If confirmed, I look forward to working with my colleagues in the Office of Air and Radiation to fulfill the duties assigned to me in EPA's Office of Enforcement and Compliance Assurance.

18. President Biden's key advisory council for environmental justice, the White House Environmental Justice Advisory Council (WHEJAC), advised President Biden that any new federal funding or support for natural gas, nuclear power development, technologies like carbon capture utilization and storage (CCUS), or highway expansion should not be considered beneficial for environmental justice communities.⁶ Do you agree with this finding?

⁴ US EPA, *City and County of San Francisco NPDES Compliance Information*, <https://www.epa.gov/ca/city-and-county-san-francisco-npdes-compliance-information>.

⁵ "Toward A Sustainable Future: An Environmental Agenda for the Second Term of the Obama Administration," published in *Toward A More Perfect Union: A Progressive Blueprint for the Second Term*, American Constitution Society for Law and Policy (January 2013), <https://repository.law.umich.edu/other/75/>

⁶ US EPA, *White House Environmental Justice Advisory Council Final Recommendations: Justice40, Climate and Economic Justice Screening Tool and Executive Order 12898 Revisions* (May 21, 2021), <https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council-final-recommendations>

RESPONSE: If confirmed, I look forward to being briefed about the recommendations of the White House Environmental Justice Advisory Council and their potential implications for EPA’s Office of Enforcement and Compliance Assurance.

19. If confirmed, would you support the implementation of the recommendations from WHEJAC in prioritizing EPA enforcement actions?

RESPONSE: If confirmed, I look forward to being briefed about the recommendations of the White House Environmental Justice Advisory Council and their potential implications for EPA’s Office of Enforcement and Compliance Assurance.

20. The federal government is not the only governmental entity that protects the environment. Do you feel that an absence or reduction in the federal jurisdiction of an environmental statute equates to an actual environmental harm?

RESPONSE: I know from my experience with the Justice Department and as a law professor that the federal government must work in partnership with state environmental protection efforts to ensure that all Americans have access to clean air and clean water and to prevent environmental harm in rural and urban areas.

21. In a 2018 *New York Times* op-ed, you criticized President Trump’s proposed Navigable Waters Protection Rule (NWPR), calling it an “assault on the environment” and claimed that “the EPA is disregarding basic science.”⁷ In making those statements, did you have data showing the proposal would result in specific and measurable environmental harms or damage?

RESPONSE: My opinion piece, *Trump Wants to Weaken Clean-Water Rules*, was published by the New York Times on December 12, 2018. My personal opinions about the Navigable Waters Protection Rule (NWPR) were based on my 17 years of experience prosecuting environmental crimes at the Justice Department and more than a decade of teaching environmental law. As I stated in that piece, I believe “...we need to do more to protect America’s waterways and ensure continued progress in the effort to provide clean drinking water, and fishable and swimmable streams — the goals Congress set when it passed the Clean Water Act in 1972.” It is my understanding that EPA’s Office of Water has the lead role at EPA for this regulation. If confirmed, I look forward to working with my colleagues in the Office of Water, as needed, to fulfill the duties assigned to me in EPA’s Office of Enforcement and Compliance Assurance.

⁷ David M. Uhlmann, *Trump Wants to Weaken Clean-Water Rules*, NEW YORK TIMES (Dec. 12, 2018), <https://www.nytimes.com/2018/12/12/opinion/trump-clean-water-weaken-rules.html>.

22. Do you have data showing that actual and realized environmental harm or damage has taken place since the NWPR was finalized and implemented?

RESPONSE: I understand that the NWPR has been vacated and remanded to the agencies, and that the agencies have halted implementation of the NWPR and are interpreting “waters of the United States” consistent with the pre-2015 regulatory regime until further notice. It is also my understanding that EPA’s Office of Water has the lead role at EPA for this regulation. If confirmed, I look forward to working with my colleagues in the Office of Water, as needed, to fulfill the duties assigned to me in EPA’s Office of Enforcement and Compliance Assurance.

23. In your EPW Nominations Questionnaire document and other documents that were provided to the Committee, in response to a question on whether you would sever all connections with your present employer if you were confirmed, you stated that you would not. You cited University of Michigan rules which allowed for you to request a leave of absence. In response to recent questions about political officials and leave of absences, EPA officials have stated multiple times:

“Consistent with White House policy over several administrations, political appointees (with the exception of Senate-confirmed appointees) are permitted to take a leave of absence from an academic institution during their government tenure, provided that the required recusals are in place to avoid a potential or actual conflict of interest.”⁸

Given this White House policy, do you still plan on taking a leave of absence if confirmed?

RESPONSE: I take seriously my ethical obligations and, if confirmed, I expect to work with EPA’s Designated Agency Ethics Official and EPA’s Ethics Office for consultation and advice about meeting my ethical obligations.

As outlined in my ethics agreement, if confirmed, I will take an unpaid leave of absence from my positions as the Jeffrey F. Liss Professor of Practice and the Director of the Environmental Law and Policy Program, both at the University of Michigan. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the University of Michigan, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for either the exemption for employees on leave from institutions of higher learning allowing participation in certain particular matters of general

⁸ Kevin Bogardus, *Republicans question EPA appointee's 'strong ties to China'*, POLITICO (Sept. 7, 2021), <https://subscriber.politicopro.com/article/eenews/2021/09/07/republicans-question-epa-appointees-strong-ties-to-china-280303>; Fred Lucas, *EPA official's ties to China-linked university spark questions*, FOX NEWS (Sept. 21, 2021), <https://www.foxnews.com/politics/epa-official-ties-china-linked-university> (emphasis added).

applicability at 5 C.F.R. § 2640.203(b), or another regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

My decision to take a leave of absence, upon confirmation, is based on the advice I have received from EPA's Office of General Counsel/Ethics Office, and my understanding that taking an unpaid leave of absence from a domestic academic institution is consistent with existing university policies and long-standing White House practice spanning several administrations.

24. Do you anticipate any required recusals?

RESPONSE: I take seriously my ethical obligations and, if confirmed, I expect to work with EPA's Designated Agency Ethics Official and EPA's Ethics Office for consultation and advice about meeting my ethical obligations. If confirmed, I will abide by my commitments articulated in my ethics agreement and recuse appropriately. I will issue a recusal statement.

Senator Inhofe:

1. Mr. Uhlmann, the Office of Enforcement and Compliance Assurance (OECA) plays an important role in bringing to justice bad actors who break environmental laws and put our communities at risk. It's important to remember that the overwhelming majority of the regulated community seek to comply with U.S. laws and regulations. Mr. Uhlmann, what would be your approach to balancing the responsibilities of enforcement while also helping the regulated community better comply with our laws?
 - a. Would you agree that OECA should prioritize helping the regulated community comply with the nation's environmental laws over punitive, heavy-handed penalties to the extent possible?

RESPONSE: I agree with Administrator Regan that EPA cannot regulate our way out of every issue. If confirmed, I will highlight the efforts of companies that promote ethics, integrity, and environmental stewardship, while holding accountable companies who break the law and expose our communities to harm.